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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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SHIRLEY LINDSAY,

Plaintiff,

v.

SHREE ENTERPRISE, LLC, a
California Limited Liability
Company;

Defendant.

No. 2:21-cv-00299-WBS-CKD

MEMORANDUM AND ORDER RE:
MOTION TO DISMISS

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Plaintiff Shirley Lindsay ("plaintiff") brought this action against Shree Enterprises, LLC ("defendant") seeking injunctive relief and damages against defendant for violation of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 et. seq., and violation of the Unruh Civil Rights Act, Cal. Civ. Code § 51-53. Defendant now moves to dismiss plaintiff's complaint in its entirety. (See "Mot. to Dismiss" (Docket No. 12).)

I. Factual and Procedural Background

1 Plaintiff is a California resident with physical
2 disabilities who is substantially limited in her ability to walk.
3 (First Am. Compl. ("FAC") at ¶ 1.) (Docket No. 9.) She suffers
4 from arthritis in the hips, knees, and hands and uses a
5 wheelchair, walker, or cane for mobility. (Id.) Defendant Shree
6 Enterprises, LLC owns and operates The Greens Hotel located at
7 4331 Stockton Boulevard in Sacramento, California. (Id. at ¶ 2.)
8 Plaintiff planned on making a trip to Sacramento in August 2021.
9 (Id. at ¶ 12.) She chose The Greens Hotel because it was at a
10 desirable price and location. (Id. at ¶ 13.) Due to plaintiff's
11 condition, she is unable to or is seriously challenged in her
12 ability to stand, ambulate, reach objects, transfer from her
13 chair to other equipment and maneuver around fixed objects. (Id.
14 at ¶ 14.) Plaintiff requires an accessible guest room and says
15 she needs to be given information about the accessible features
16 in hotel rooms so that she can confidently book these rooms.
17 (Id. at ¶ 15.) On January 19, 2021, plaintiff went to The Greens
18 Hotel reservation website at <https://www.thegreensstockton.com>
19 seeking to book an accessible room at the location. (Id. at ¶
20 16.)

21 Plaintiff alleges that there was insufficient
22 information about the accessible features in the "accessible
23 rooms" at the hotel to permit her to assess independently whether
24 a given hotel room would work for her. (Id. at ¶ 18.) The hotel
25 website has numerous places where it identifies accessible
26 features that are available but, when it comes to features for
27 any particular or given hotel room, the hotel reservation website
28 system provides no information about the features of the roll-in

1 shower. (Id. at ¶ 19.) The hotel states, for example, that its
2 "Accessible King" bedroom "comes with key accessible features
3 like a roll-in shower" but does not mention any sort of shower or
4 features within the accessible shower. (Id. at ¶ 20.) The hotel
5 provides a closeup photo of the roll-in shower which appears to
6 show blatant violations, clearly demonstrating that the shower is
7 not accessible and would create problems for the plaintiff.

8 (Id.)

9 Plaintiff alleges that in standard roll-in showers, the
10 shower seat must fold up and cannot be a permanent seat. (Id. at
11 ¶ 21.) Roll-in showers must also have controls, faucets, and
12 shower spray installed on the back wall adjacent to the seat wall
13 and cannot be further than 27 inches from the seat wall.

14 (Id.) In the picture provided on The Greens Hotel website, the
15 controls and the shower head appear far away from the seat and it
16 does not appear that a wheelchair user using the seat could
17 operate the controls. (Id. at ¶ 22.)

18 She also alleges that the shower spray unit must be
19 detachable and with a hose at least 59 inches long that can be
20 used as both a fixed-position shower head and as a hand-held
21 shower. (Id. at ¶ 23.) In the photo on The Greens Hotel
22 website, the shower spray unit appears to be fixed, and it does
23 not appear as though a detachable spray unit is provided. (Id.)
24 The hotel's photo of the "accessible bathroom" in the "accessible
25 guestroom" also appears to show a mirror that is unusable by
26 wheelchair users because the bottom edge of the mirror is not
27 below 40 inches from the floor. (Id. at ¶ 24.)

28 Plaintiff alleges that she was unable to book a hotel

1 room at The Greens Hotel because she could not book the hotel
2 room with any confidence or knowledge that the hotel room would
3 work for her due to her disability. (Id. at ¶ 25.) Plaintiff
4 alleges that because of the lack of information regarding the
5 accessibility of bathrooms, the conflicting information presented
6 by the photo, and plaintiff's recognition of the actual barriers,
7 she was deterred from booking this room. (Id. at ¶ 26.)
8 Plaintiff says she will continue to travel to the Sacramento area
9 on a regular and ongoing basis and will patronize The Greens
10 Hotel once the defendant has changed its policies to comply with
11 the ADA such that she can determine whether the hotel is
12 physically accessible during the reservation process. (Id. at ¶
13 28.)

14 II. Request for Judicial Notice

15 Federal Rule of Evidence 201 permits a court to notice
16 a fact if it is "not subject to reasonable dispute." Fed. R.
17 Evid. 201(b). A fact is "not subject to reasonable dispute" if
18 it is "generally known," or "can be accurately and readily
19 determined from sources whose accuracy cannot reasonably be
20 questioned." See id. In its request for judicial notice in
21 support of its motion to dismiss (Docket No. 12-4), defendant
22 requests that the court take judicial notice of: (1) a copy of
23 The Greens Hotel website "landing page", (2) relevant webpages of
24 The Greens Hotel, (3) a list of lawsuits filed by Shirley Lindsay
25 in the Central and Eastern Districts of California between 2015
26 and 2020; (4) the Consent Decree in United States v. Hilton
27 Worldwide Inc., No. 10-1924, filed in the District Court of the
28 District of Columbia on November 28, 2010, and (5) the Order in

1 Laufer v. Mann Hospitality, 996 F. 3d 269, 271-74 (5th Cir.
2 2021).

3 Plaintiff opposes defendant's request for judicial
4 notice of the website pages proffered by defendant because they
5 are undated and allegedly do not reflect the website that she
6 visited in January 2021. (See Opp'n to Mot. to Dismiss at 1.)
7 (Docket No. 16.) Plaintiff also opposes defendant's request for
8 judicial notice as to plaintiff's litigation history on the
9 grounds that it is not relevant to the issues before the court.
10 (See id. at 2-3.)¹

11 In its reply, defendant also asks the court to take
12 judicial notice of several more items. (See Docket No. 17-1.)
13 These include: (1) a series of screen captures from Archive.org's
14 "Wayback Machine" from The Greens Hotel's website on August 6,
15 2020; (2) a series of screen captures from Archive.org's "Wayback
16 Machine" from The Greens Hotel's website on September 23, 2020;
17 (3) a series of screen captures from Archive.org's "Wayback
18 Machine" from The Greens Hotel's website on November 24, 2020;
19 (4) a copy of the initial disclosures from Shirley Lindsay in
20 this matter; (5) the Order Granting Defendant's Motion to Dismiss
21 in Whitaker v. LL South San Francisco, L.P., Case No. 21-cv-

23 ¹ To her opposition plaintiff attaches an undated
24 screenshot of how the "bathroom accessibility" features of the
25 website purportedly looked on January 19, 2021, but does not
26 request that the court take judicial notice of this document.
27 (See Opp'n to Mot. to Dismiss at Ex. 1.) The court will not take
28 judicial notice of plaintiff's undated screenshot because it is
not a fact that "can be accurately and readily determined from
sources whose accuracy cannot reasonably be questioned." See
Fed. R. Evid. 201. The court has therefore not taken this
"evidence" into consideration in deciding this motion.

1 00632-HSG, 2021 WL 2291848, at *1-6 (N.D. Cal. June 4, 2021); (6)
2 the Order Granting Defendant's Motion to Dismiss in Rios v.
3 Leadwell Global Property, Case No. 21-cv-00267-PJH, 2021 WL
4 2207408, at *1-7 (N. D. Cal. June 1, 2021); and (7) the Order
5 Granting Defendant's Motion to Dismiss in Garcia v. Pinnacle
6 1617, LLC, Case No: 21-cv-00126-CAB-AGS, 2021 WL 1963823, at *1-6
7 (S.D. Cal. May 17, 2021).

8 The court declines to take judicial notice of any of
9 the materials submitted by defendant in either its motion or its
10 reply. The court does not find plaintiff's litigation history
11 relevant to this matter; she has already informed the court that
12 she is an "ADA tester", or someone who evaluates and documents
13 the accessibility of businesses and websites to ensure that they
14 comply with the ADA, and her litigation history is not helpful in
15 deciding any of the issues before the court. (See FAC at ¶ 27.)
16 The screenshots of the websites attached to the motion to dismiss
17 are undated, and plaintiff contends that the website has
18 substantially changed since she first visited it in January 2021.
19 (See Opp'n to Mot. to Dismiss at 7-9.)²

20 The court similarly declines to take judicial notice of
21 screenshots of The Greens Hotel website obtained through
22 Archive.org's "Wayback Machine". None of the proffered
23 screenshots date from the relevant time period of January 2021,

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25 ² Garcia v. Sweet 2017, LLC, Case No. 2:20-cv-01281-JAM-
26 DB, 2021 WL 2417139, at * 2 (E.D. Cal. June 14, 2021), cited by
27 defendant in support of its argument that the court could take
28 judicial notice of the defendant's web pages, is distinguishable
from the present case because the plaintiff did not challenge the
authenticity of the web pages at issue or object to the court
taking judicial notice of those web pages. See id. at *2.

1 and the court cannot conclude at this time that the contents of
2 these web pages are "facts that can be accurately and readily
3 determined from sources whose accuracy cannot reasonably be
4 questioned." See Fed. R. Evid. 201(b).³ Accordingly, the court
5 will deny defendant's requests for judicial notice. (See Docket
6 Nos. 12-4; 17-1.)

7 III. Discussion

8 Defendant argues that plaintiff lacks standing and the
9 complaint must therefore be dismissed pursuant to Federal Rule of
10 Civil Procedure 12(b)(1). (See Mot. to Dismiss at 6.) Defendant
11 also argues that plaintiff has failed to state a claim as a
12 matter of law and that her complaint should be dismissed under
13 Federal Rule of Civil Procedure 12(b)(6). (See id. at 6-7.) The
14 court will address each argument in turn.

15 A. Motion to Dismiss under 12(b)(1)

16 Federal Rule of Civil Procedure 12(b)(1) governs
17 motions for lack of subject matter jurisdiction. See Fed. R.
18 Civ. P. 12(b)(1). To have standing to sue in federal court, a
19 plaintiff must have "(1) suffered an injury in fact, (2) that is

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21 ³ At oral argument, defendant emphasized that other
22 district courts have previously taken judicial notice of
23 Arhive.org's "Wayback Machine" and pointed the court to UL LLC
24 v. The Space Chariot Inc. et al., 250 F. Supp. 3d 596, 604 n.2
25 (C.D. Cal. 2017). To the extent that those cases may be read to
26 be inconsistent with the court's ruling here, this court
27 disagrees with them. Moreover, in UL LLC, the court took
28 judicial notice of pages from the "Wayback Machine" in the
context of a motion for summary judgment, not at the motion to
dismiss stage. See id. at 596. Moreover, none of the cases
cited by UL LLC in support of the proposition that a court may
take judicial notice of the contents of web pages from the
"Wayback Machine" were in the context of a motion to dismiss.
See id. at 604 n.2.

1 fairly traceable to the challenged conduct of the defendant, and
2 (3) that is likely to be redressed by a favorable judicial
3 decision.” See Spokeo v. Robbins, 136 S. Ct. 1540, 1547
4 (2016) (internal citations omitted).

5 To establish injury in fact, “a plaintiff must show
6 that he or she suffered an invasion of a legally protected
7 interest that is concrete and particularized and actual or
8 imminent, not conjectural or hypothetical.” Id. (internal
9 quotations and citations omitted). “Article III standing
10 requires a concrete injury even in the context of a statutory
11 violation.” Id. In the context of injunctive relief, plaintiff
12 must additionally demonstrate “a sufficient likelihood that [she]
13 will again be wronged in a similar way.” Fortyune v. Am. Multi-
14 Cinema, Inc., 364 F.3d 1075, 1081 (9th Cir. 2004). The party
15 invoking federal jurisdiction must establish each element with
16 the manner and degree of evidence required at the successive
17 stages of the litigation. See Carrico v. City and Cnty. of San
18 Francisco, 656 F.3d 1002, 1006 (9th Cir. 2011). Accordingly, at
19 the motion to dismiss stage, the court will base its analysis on
20 plaintiff’s First Amended Complaint, which the court accepts as
21 true. See id.

22 Defendant contends that plaintiff has only suffered an
23 “informational injury”, not an injury in fact, and therefore
24 lacks standing under the principles set forth by the Supreme
25 Court in Spokeo. (See Mot. to Dismiss at 7-9.) Defendant relies
26 solely on Laufer v. Mann Hospitality, L.L.C., 996 F.3d 269, 271-
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1 274 (5th Cir. 2021) to support its proposition.⁴ In Laufer, the
2 Fifth Circuit found that an ADA tester had not adequately alleged
3 that she had suffered an injury-in-fact to support standing
4 because she visited the hotel's website solely "for the purpose
5 of reviewing and assessing the accessible features at the hotel
6 and ascertain[ing] whether the websites contain the information
7 required by [ADA regulations]." Id. at 272. The Fifth Circuit
8 also emphasized that the plaintiff attested only a general intent
9 to visit the area someday, not a specific desire to visit the
10 hotel at issue. See id.

11 At least from the allegations of the First Amended
12 Complaint, the facts of this case are distinguishable from those
13 in Laufer in that unlike the plaintiff in Laufer who expressed
14 only a general desire to travel to Texas following the COVID-19
15 pandemic, see Laufer, 996 F.3d at 272, plaintiff here has stated
16 that she planned to travel to Sacramento, California in August
17 2021. (See FAC at ¶ 12.) She specifically chose The Greens
18 Hotel because it had a desirable price and location. (See id. at
19 ¶ 13.) Plaintiff also alleges that she travels frequently and
20 will continue to travel to the Sacramento area on a regular and
21 ongoing basis and seek to patronize this hotel. (See id. at ¶¶
22 27-28.) The court finds that these allegations sufficiently
23 pleaded a concrete injury-in-fact for standing purposes.

24 B. Motion to Dismiss under 12(b)(6)

25 Federal Rule of Civil Procedure 12(b)(6) allows for
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27 ⁴ The Ninth Circuit has yet to rule on the standing
28 requirements for an ADA violation of the "Reservations Rule" on
websites. (See Mot. to Dismiss at 8.)

1 dismissal when the plaintiff's complaint fails to state a claim
2 upon which relief can be granted. See Fed. R. Civ. P. 12(b)(6).
3 The inquiry before the court is whether, accepting the
4 allegations in the complaint as true and drawing all reasonable
5 inferences in the plaintiff's favor, the complaint has stated "a
6 claim to relief that is plausible on its face." Bell Atl. Corp.
7 v. Twombly, 550 U.S. 544, 570 (2007). "The plausibility standard
8 is not akin to a 'probability requirement,' but it asks for more
9 than a sheer possibility that a defendant has acted unlawfully."
10 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). "Threadbare
11 recitals of the elements of a cause of action, supported by mere
12 conclusory statements, do not suffice." Id. Although legal
13 conclusions "can provide the framework of a complaint, they must
14 be supported by factual allegations." Id. at 679.

15 To succeed on a discrimination claim under Title III of
16 the ADA, a plaintiff must show that "(1) [s]he is disabled within
17 the meaning of the ADA; (2) the defendant is a private entity
18 that owns, leases, or operates a place of public accommodation;
19 and (3) the plaintiff was denied public accommodation by the
20 defendant because of [her] disability." See Arizona ex rel.
21 Goddard v. Harkins Amusement Enters., Inc., 630 F.3d 666, 670
22 (9th Cir. 2011). The third element is satisfied when the
23 plaintiff can show a violation of accessibility standards. See
24 Rodriguez v. Barrita, Inc., 10 F. Supp. 3d 1062, 1073 (N.D. Cal.
25 2014). It is the third element that is at issue here because
26 plaintiff asserts that The Greens Hotel's reservation system
27 violates the ADA Reservations Rule by failing to describe the
28 hotel's accessibility features in sufficient detail, thus denying

1 her public accommodation. (See FAC at ¶ 34.)

2 Under the "Reservations Rule" promulgated pursuant to
3 the ADA, a hotel's reservation website must "[i]dentify and
4 describe accessible features in the hotels and guest rooms
5 offered through its reservations service in enough detail to
6 reasonably permit individuals with disabilities to assess
7 independently whether a given hotel or guest room meets his or
8 her accessibility needs. . . ." 28 C.F.R. § 36.302(e)(1)(ii).

9 The Department of Justice's ("DOJ") so-called
10 "guidance" on the Reservations Rule states:

11 The Department recognizes that a reservations
12 system is not intended to be an accessibility
13 survey. However, specific information concerning
14 accessibility features is essential to travelers
15 with disabilities. Because of the wide
16 variations in the level of accessibility that
17 travelers will encounter, the Department cannot
18 specify what information must be included in
19 every instance. For hotels that were built in
20 compliance with the 1991 Standards, it may be
sufficient to specify that the hotel is
accessible and, for each accessible room, to
describe the general type of room (e.g., deluxe
executive suite), the size and number of beds
(e.g., two queen beds), the type of accessible
bathing facility (e.g., roll-in shower), and
communications features available in the room
(e.g., alarms and visual notification devices). .
.

21 [O]nce reservations are made . . . many
22 individuals with disabilities may wish to contact
23 the hotel or reservations service for more
24 detailed information. At that point, trained
25 staff (including staff located on-site at the
26 hotel and staff located off-site at a
reservations center) should be available to
provide additional information such as the
specific layout of the room and bathroom, shower
design, grab-bar locations, and other amenities
available (e.g., bathtub bench). . .

27 28 C.F.R. pt. 36, App. A (2010), Title III Regulations 2010
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1 Guidance and Section-by-Section Analysis, (“DOJ Guidance”). The
2 DOJ’s administrative guidance in interpreting the requirements of
3 the ADA is entitled to deference. See Bragdon v. Abbott, 524
4 U.S. 624, 646 (1998) (“As the agency directed by Congress to
5 issue implementing regulations . . . to render technical
6 assistance explaining the responsibilities of covered individuals
7 and institutions and to enforce Title III in court, the
8 [Department of Justice’s] views are entitled to deference.”).

9 Defendant argues that The Greens Hotel website provides
10 more accessibility information than is required under the
11 “Reservations Rule.” (See Mot. to Dismiss at 9.) District
12 courts throughout California have held that the “Reservations
13 Rule” does not require a hotel to include all potentially
14 relevant accessibility information on its website. See Barnes v.
15 Marriott Hotel Servs., Inc., No. 15-cv-01409-HRL, 2017 WL 635474
16 at *10 (N.D. Cal. Feb. 16, 2017) (finding website with ADA
17 designation and general “accessible room” designations
18 appropriate and acceptable under the DOJ’s guidance); see
19 Rutherford v. Evans Hotels, LLC, 2020 WL 5257868, at *17 (S.D.
20 Cal. Sept. 3, 2020) (“[J]ust because [plaintiff] would like
21 additional details does not mean that he is entitled to it under
22 Section 36.302(e)(1)(ii)”).

23 However, at least one district court in California has
24 held that although a website need not address every potential
25 accessibility issue, that does not mean that it does not need to
26 describe any potential issue, or only those that the DOJ Guidance
27 notes may be sufficient. See Garcia v. Patel & Joshi Hosp.
28 Corp., Case No. EDCV 20-2666 JGB (PVCx), 2021 WL 1936809, at *4


1 (C.D. Cal. Mar. 19, 2021). The Garcia court noted that the DOJ
2 Guidance states that because "there are wide variations in the
3 level of accessibility that travelers will encounter," the DOJ
4 does not "specify what information must be included in every
5 instance." Id. The Garcia court therefore concluded that, as
6 pleaded, the plaintiff's case might be one instance where
7 additional information was needed even if it complied with
8 information that the DOJ Guidance has stated "might be
9 sufficient" in some cases. Id. at 5-6.

10 This court cannot determine on a motion to dismiss
11 whether The Greens Hotel website actually provided sufficient
12 information under the "Reservations Rule" because (1) the court
13 cannot take judicial notice of the screenshots of the hotel's
14 webpages proffered by defendant, and (2) the regulation itself
15 requires an assessment of reasonableness which is
16 characteristically a question for the trier of fact rather than
17 the court to determine. Therefore, taking plaintiff's
18 allegations to be true and construing reasonable inferences in
19 the light most favorable to plaintiff, the court finds that
20 plaintiff plausibly alleges that The Greens Hotel website did not
21 "describe accessible features. . . in enough detail to reasonably
22 permit [her] to assess independently" whether the hotel rooms
23 meet her accessibility needs. See 28 C.F.R. § 36.302(e)(1)(ii).
24 The court will accordingly deny defendant's motion to dismiss
25 plaintiff's second claim under the California Unruh Civil Rights
26 Act predicated on the alleged underlying ADA violation.

27 IT IS THEREFORE ORDERED that defendant's motion to
28 dismiss, (Docket No. 12), be, and the same hereby is, DENIED.

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Dated: July 1, 2021


WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE